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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 69

WALTER E. PEARSON, STATE TREASURER OF THE STATE OF OREGON,

Petitioner,

v.

RUTH HAYES McGRAW AND EDMUND HAYES, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF EDWARD STEPHEN HAYES, DECEASED, AND AS INDIVIDUALS,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

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No. 69

IN THE MATTER OF THE ESTATE OF EDWARD STEPHEN HAYES, DECEASED.

WALTER E. PEARSON, STATE TREASURER OF THE STATE OF OREGON,

Petitioner,

v.

RUTH HAYES McGRAW AND EDMUND HAYES, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF EDWARD STEPHEN HAYES, DECEASED, AND AS INDIVIDUALS,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

The opinion of the Supreme Court of the State of Oregon is reported in Vol. 28, Oregon Advance Sheets 103 and 403, 86 Pac. (2d) 424 and 87 Pac. (2d) 766 (R. 141).

Jurisdiction.

The judgment of the Supreme Court of Oregon was entered on the 17th day of January, 1939 (R. 166). A petition for rehearing was filed February 18, 1939,

within the time provided therefor as extended by order of the Supreme Court entered February 8, 1939 (R. 168). Petition for rehearing was considered by the court and thereafter denied on March 7, 1939 (R. 211).

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Acts of December 23, 1914, c. 2, 38 Stat. 790; September 6, 1916, c. 248, Section 2, 39 Stat. 726; February 17, 1922, c. 54, 42 Stat. 366; February 13, 1925, c. 229, Section 1, 43 Stat. 937; Jan. 31, 1928, c. 14, Section 1, 45 Stat. 54.

Respondents contend and in their pleadings have averred that the State of Oregon is without jurisdiction to impose the inheritance tax herein demanded upon a gift made by decedent in contemplation of death, for the alleged reason that the subject matter of the gift was tangible personal property situated outside the State of Oregon; and that the imposition of such tax would constitute a taking of Respondents' property without due process of law, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States. A judgment in favor of the State for the amount of tax demanded was reversed on appeal by the Supreme Court of the State of Oregon on the constitutional grounds asserted by Respondents.

STATEMENT OF THE CASE

This action arose out of objections filed by the Treasurer of the State of Oregon to an ex parte order of the Circuit Court of Multnomah County, Oregon, determining inheritance tax in the estate of Edward Stephen Hayes, deceased. The State Treasurer demanded that inheritance tax be paid to the State of Oregon upon a gift by the deceased to Harris Trust & Savings Bank

of Chicago, Illinois, as trustee for decedent's children, their spouses and issue. Respondents, as executors of decedent's estate and as individual beneficiaries, filed answer alleging that the gift consisted of currency physically located in Chicago, and beyond the taxing jurisdiction of the State of Oregon. The State Treasurer replied and the case being tried upon written stipulation of facts, resulted in a decree that the State was entitled to inheritance tax on the gift.

On appeal the Supreme Court of the State of Oregon reversed the decree, holding that the gift could not be subjected to inheritance tax by the State of Oregon without violation of Article I of the Fourteenth Amendment to the Federal Constitution.

SUMMARY OF FACTS

The facts of this case have been agreed by the parties by admissions in the pleadings and by written stipulation which, for convenience, is attached to this brief as Appendix A. For the purpose of the argument they may be summarized as follows:

Edward Stephen Hayes, a retired physician, died in Multnomah County, Oregon, February 11, 1936, at the age of seventy-nine years. He was a resident of and domiciled in the State of Oregon at the time of his death (R. 112). Until about six months before his death he possessed stocks, bonds and other intangibles worth in excess of $1,000,000.00, most of which were, and for some time had been, in the custody of Harris Trust & Savings Bank of Chicago, Illinois (hereinafter called Harris Bank) (R. 114). The Harris Bank acted as financial agent and advisor of Hayes in the safekeeping and investment of his personal fortune (R. 113).

In the fall of 1935, decedent's age and health were such that he distributed most of his estate by creating two trusts, with the Harris Bank as trustee, known as Edward Stephen Hayes Trust No. I and Edward Stephen Hayes Trust No. II (R. 118, 120). At his death he left property to the value of $28,228.91, which was disposed of by his last will executed September 25, 1935 (R. 17).

Respondents as executors of decedent's estate have admitted and paid inheritance tax to the State of Oregon on the probated estate and on that portion of the decedent's assets distributed by means of Trust No. II (R. 20, 122).

The State of Oregon seasonably demanded inheritance tax upon the portion of decedent's assets which he had distributed by creating Trust No. I (R. 62). The tax is asserted under Section 10-601, Oregon Code 1930 (as amended by Chapter 26, Laws of Oregon, 1933), a copy of which is hereto attached (Appendix B). So far as material in this case, the statute reads:

> "All property within the jurisdiction of the state, and any interest therein, * * * whether tangible or intangible, which shall pass or vest by * * * will or by statutes of inheritance * * *, or by deed, grant, bargain, sale or gift, or as an advancement or division of his or her estate made in contemplation of the death of the grantor, or bargainor, * * * in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to tax at the rate hereinafter specified in section 10-603, to be paid to the Treasurer of the state for the use of the state; * * *"

It is stipulated that at the date of his death and at the time the gift in question was made, Edward Stephen Hayes was domiciled in the State of Oregon (R. 112); and that he made the gift as a distribution of his estate in contemplation of death (R. 119). No question of interpretation of Oregon statutes is involved; and it is conceded by respondents that if the property which was the subject of this transfer was within the jurisdiction of the State, the statute just cited is broad enough to subject the transfer to inheritance tax.

In creating Trust No. I decedent gave $450,000.00 to the Harris Bank at Chicago, Illinois, for the use of his children and other beneficiaries. Prior to the creation of this trust, decedent's estate was invested in stocks, bonds and other intangibles. A day or two prior to completion of the gift, decedent converted $450,000 of his bonds into Federal reserve notes which were then handed over to the trustee. The precise manner in which this conversion was accomplished is as follows:

On August 8, 1935, Hayes directed Harris Bank to liquidate sufficient of his bonds to realize a fund of $450,000.00, and with that money to purchase Federal reserve notes of equal face value. The Bank proceeded to do so and by August 12, 1935, had realized from sale of bonds $176,062.01, to which the bank added $90,000.00 from Hayes checking account and $183,937.99 which it advanced to him on his promissory note (R. 115). This note was liquidated before the end of August by further sale of decedent's bonds. Between August 12th and August 15th, Harris Bank obtained for Hayes, with the money thus realized, forty-five Federal reserve notes of $10,000.00 denomination

which it placed in a safe deposit box in his name at Harris Bank in the State of Illinois (R. 116).

On August 15, 1935, at Portland, Oregon, Hayes executed Trust No. I, by which he irrevocably transferred the Federal reserve notes to the Harris Bank, as trustee, for the sole use of his children and other beneficiaries (R. 118). Hayes forwarded the trust instrument to Chicago by airmail and Harris Bank executed it in that city on August 17, 1935, and took possession of the money. Thereafter, commencing August 19, 1935, the trustee, from time to time, reconverted the money into securities and other personal property (R. 119).

ARGUMENT

It is obvious from reading the inheritance tax law of the State of Oregon (Section 10-601, Oregon Code 1930), that the Legislature intended to reach and tax every transfer of property within the jurisdiction of the State, which was made as a distribution of the decedent's estate in contemplation of death. There is no dispute in this case on any of the elements of tax except one. It has been stipulated (1) that decedent was domiciled in the state of Oregon; (2) that he made a gift of $450,000 as a distribution of his estate; and (3) that the gift was made in contemplation of his death. The dispute arises over whether the subject matter of the gift was within the taxing jurisdiction of the state.

It is Respondent's contention, sustained by the Court below, that the gift in question is not within the taxing jurisdiction of the state of Oregon by reason of the fact that the actual property handed over

to the trustee consisted of Federal reserve notes. They contend that these notes were chattels which at the time had a physical situs in Illinois and hence were not taxable in the State of Oregon.

On the other hand, Petitioner's position is that the State of Oregon has jurisdiction to tax this gift because Oregon was the domicile of decedent at the time of his death; and because at the time decedent planned and commenced to carry out his gift the property in question consisted of intangibles having their taxable situs within the state. Petitioner contends that the temporary conversion of these intangibles into Federal reserve notes before the gift was completed did not defeat the taxing power of this state, because the conversion itself was done in contemplation of death as a device to evade tax.

A

The Oregon inheritance tax is a tax on the right or privilege of the living to receive property from the dead.

In re Inman's Estate, 101 Or. 182, 199 Pac. 615.

In re Lewis' Estate, 160 Or. 486, 85 Pac. (2d) 1032.

B

The tax extends to the transfer in contemplation of death by a resident of Oregon of his intangibles located in another state.

Curry v. McCanless, 307 U. S. 357, 83 L. ed. 865.
Graves v. Elliott, 307 U. S. 383, 83 L. Ed. 880.
Blodgett v. Silberman, 277 U. S. 1, 48 S. Ct. 410, 72 L. ed. 749.
Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 436, 74 L. ed. 1056.

Respondents take too narrow a view of the question presented by this case. The taxable event is not, as they argue, the mere manual transmission of the Federal reserve notes from Dr. Hayes to the Harris Bank. That act constituted only part of the transaction. The taxable transfer is the "advancement or division of his . . . estate" made by Dr. Hayes in contemplation of his death. This transfer was not accomplished in an instant for completion of the gift required the performance of a number of related acts extending over a period of nine or ten days.

Dr. Hayes commenced making the gift on August 8, 1935, by directing his financial agent to liquidate securities, and did not complete it until the trustee took possession of the Federal reserve notes on August 17, 1935. Between these two dates, the Harris Bank was selling the decedent's bonds and getting possession of the Federal reserve notes. Meanwhile decedent was engaged in executing the trust indenture and forward-

ing the same for acceptance by the trustee. All of these acts taken together constitute the distribution referred to by the statute; and each and all of them were done in contemplation of the donor's death.

At the time this train of events was set in motion the estate which decedent had determined to divide among his heirs was invested in stocks, bonds and other intangibles which had a situs for taxation at Dr. Hayes' domicile in the State of Oregon. *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371; *Baldwin v. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056; *Blodgett v. Silberman*, 277 U. S. 1, 48 S. Ct. 410, 72 L. Ed. 749.

The Harris Bank, at Chicago, had custody of these intangibles as financial agent and advisor of decedent; but that custody was not such as to give them a business situs in the state of Illinois. *New Orleans v. Stemple*, 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174; *Manufacturers Trust Co. v. Hackett*, 118 Conn. 101, 170 Atl. 792.

C

The State of Oregon has jurisdiction to tax the transfer by a resident of his intangibles which have acquired a business situs in some other state.

Curry v. McCanless, 307 U. S. 357, 83 L. Ed. 865.
Graves v. Elliott, 307 U. S. 383, 83 L. Ed. 880.

Even if it be assumed that the intangibles had acquired a business situs in Chicago the State of Oregon was not, thereby, deprived of its power to tax them. *Curry v. McCanless*, 307 U. S. 357, 183 L. Ed. 865; *Graves et al. v. Elliott*, 307 U. S. 383, 83 L. Ed. 880.

In *Curry v. McCanless*, 307 U. S. 357, 183 L. Ed. 865, this court held that notwithstanding intangibles had acquired a situs for taxing purposes in another state, they continued to be taxable at the domicile of the owner, for the reason that:

> "* * * The decedent's power to dispose of the intangibles was a potential source of wealth which was property in her hands from which she was under the highest obligation, in common with her fellow citizens of Tennessee, to contribute to the support of the government whose protection she enjoyed. Exercise of that power, which was in her complete and exclusive control in Tennessee, was made a taxable event by the statutes of the state. * * *"

It is the contention of the petitioner in this case that this duty of the settlor did not terminate upon the conversion of the intangibles into tangibles under the circumstances involved, but continued until the gift was completed. The duty of the settlor to the State of Oregon did not terminate *ipso facto* upon the conversion being completed. The intangibles were held by his agent in Illinois for a very brief period, and no further business transactions with them were required or contemplated until the gift had been completed. Under such circumstances it should not be held that the tangibles acquired a situs for taxation in Illinois, or that they ceased to be subject to taxation by any state during the time they were retained by the agent

in that form. The State of Oregon has no interest in the tangibles or what was done with them after the gift was completed, except to show the intent of the settlor that they should soon thereafter be reconverted into income-bearing property.

D

Such jurisdiction is not defeated by a change in the nature of the gift or of its location when made for the purpose of evading the tax.

Cooley on Taxation, 4th Ed., Sec. 548.
Shotwell v. Moore, 129 U. S. 590, 32 L. Ed. 827.
Whiting Finance Co. v. Hopkins, 115 Cal. App. 756, 2 Pac. (2d) 461.
Brock & Co. v. Los Angeles County, 8 Cal. (2d) 286, 65 Pac. (2d) 791.
Poppleton v. Yamhill County, 8 Or. 388.
Durham v. Anderson, 6 Ind. App. 23.
West Virginia Mortgage & Discount Corp. v. Newcomer, 101 W. Va. 292.
In re People's Bank of Vermont, 208 Ill. 300.

It is perfectly clear that when Hayes decided to make the gift and commenced to execute his intention, the property which he intended to give away was within the jurisdiction of the State of Oregon, and this jurisdiction was not divested by the simple device of converting the subject matter into Federal reserve notes long enough to complete the gift. The possibility that such schemes might be tried was foreseen in

Baldwin v. Missouri, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, where this Court reserved for future consideration any case in which the decedent should "undertake to arrange for succession" in some state other than his domicile and "thus defeat collection of the death duties prescribed at his domicile".

The only motive which Hayes could have had in converting his bonds into paper money was to place himself in possession of something tangible long enough to complete a gift in the state of Illinois, and thus, if possible, remove the taxable situs from the state of his domicile. This was admitted on the argument in the Court below and we presume it will not be denied here. If successful, decedent would thus remove $450,000 of his taxable estate from the higher brackets of the Oregon rates and thus cut down inheritance tax on his estate by a large amount. It cannot be denied that the conversion of the intangibles into paper money was merely temporary. The stipulation shows that it commenced on August 8th and was completed on the 15th, when the trust was signed. and that reinvestment in intangibles commenced on August 19th. One has only to read the provisions of Trust No. I to see that Dr. Hayes did not intend this capital to remain dormant in the shape of bank notes. The Trust is replete with directions for its profitable investment. His intention was to make his gift yield income to his beneficiaries, and this purpose would have been totally defeated if the subject matter of the gift remained buried in the shape of currency. So the purchase of the Federal Reserve Notes was not only *temporary in fact* but also it was *intended by Hayes* to be merely temporary.

Hayes knew that Oregon would tax all gifts except those of tangible property having an "actual situs" outside the State, so he sought to lend a tangible form to this gift by dressing it up temporarily in the form of currency. His selection of Federal Reserve Notes as a vehicle was no doubt dictated by obvious reasons of convenience and safety. He could not conveniently buy real estate or tangible commodities of such value in the time he had at his command; and such property cannot be reconverted into securities without serious delay, risk and trouble.

We concede, of course, that any citizen of the state of Oregon has the absolute right to remove his domicile from its jurisdiction. He may also invest his estate in real property or tangibles having a bona fide situs elsewhere, even though the change is made to escape the tax laws of this state. But in all such cases the good faith and permanence of the change are open to inquiry. In Cooley on Taxation, 4th Ed., Sec. 548, it is said:

> "On the other hand, taxation cannot be avoided (1) by a plan in itself unlawful or (2) by a plan lawful in itself, not actually carried out, which is a mere subterfuge to escape taxation. If the transaction is merely a temporary change of property from nonexempt into exempt property made shortly before the assessment, with the intent of restoring the property to its original form after the assessment, there is such fraud as warrants taxation of the property."

The rule was approved by this Court in *Shotwell vs. Moore*, 129 U. S. 590, 32 L. Ed. 827, where a taxpayer attempted to evade tax on his bank deposit by withdrawing all of it just before assessment date in the shape of nontaxable greenbacks which he redeposited

a few days later. The Court held this a fraud on the revenue which did not defeat the State's right to tax.

In that case the defendant, who for many years had been a resident of Ohio, transferred his general deposits into securities commonly called "greenbacks", enclosed the same in a package, wrote his name thereon, and returned the same to the officer of the bank, requesting him to place the same in the bank's safe for him, which was done. The court found that on no occasion did the defendant carry the money out of the bank building; and in the early part of the next week in each of said years he returned to the bank and demanded his package, which was given him, and he opened the same and delivered it to an officer of the bank, asking that the amount should be placed to his credit as a general depositor, which was done; that on each occasion the defendant drew out the balance due him with intent to evade taxation on such balances. This court said, page 596 of U. S. Report, page 828 of L. Ed.:

> "It does not need the finding of the court below as a fact to show that this was an evasion, and a discreditable one, of the taxing laws of the State, if it could be made successful. It is, therefore, urged that on this ground alone—the illegal purpose for which the transactions were made in the bank—the court should hold the plaintiff in error liable to taxation for the amount thus converted. * * *"

In referring to the case of *Mitchell v. Leavenworth County*, 91 U. S. 206, 23 L. Ed. 302, involving conduct which the court held to be precisely similar to that of the plaintiff in *Shotwell v. Moore*, the court said:

> "All these decisions show that the courts look upon this transaction as indefensible, and consider

it an improper evasion of the duty of the citizen to pay his share of the taxes necessary to support the Government which is justly due on his property."

Among other cases cited by the court in that opinion are *Poppleton v. Yamhill County*, 8 Ore. 337, and *Jones v. Seward Co.*, 10 Neb. 154.

In the last named case Jones, the owner of a bank, converted funds in the bank to his individual credit into United States bonds. The court said, page 159:

"Where a change is thus made for the sole purpose of defrauding the government of its just dues, and to enable a party to escape the payment of his just proportion of the taxes imposed by law, he cannot shelter himself behind such temporary change in the character of his funds to escape taxation."

In *Durham v. The State, ex rel. Anderson*, 6 Ind. App. 23, appellant had on the 11th day of January, 1888, on deposit to his credit in a bank $100,000.00 in money, and agreed to maintain that amount in deposit in consideration of the payment of interest at four per cent. On the 31st day of March, 1888, he had on deposit to his credit in the bank, under said contract, $104,842.00. For the fraudulent purpose of preventing a large portion of such property from being listed, and evading the payment of taxes thereon, he, on that day, drew his check on the bank against his said account for $24,025.00 and presented it to the cashier of the bank, and requested and received in payment therefor that sum in United States treasury notes not taxable, commonly called greenbacks. Upon receiving those notes appellant enclosed them in a package and placed same for safe keeping in the safe of said bank,

where he kept the same until the 11th day of April, 1888, when the cashier of said bank requested that they be restored to his credit in said bank under said contract, and thereupon the appellant withdrew said package and redeposited said sum of treasury notes in the bank, and they were placed to his credit in the books thereof. The court said, page 27:

> "The liability to taxation for such property is not determined by the apparent ownership on the 1st of April. It is to be taxed to the person who temporarily converted it for such purpose, if the assessor can discover that it has been so converted. It is immaterial, in such a case, whether the converted property has been transferred beyond the limits of the State or not. In either case, it is property which under the statute is liable to taxation. The evading the burden of taxation for which the penalty is prescribed is none the less a fraud upon the revenue because the transaction is between persons resident in this State, and does not result in the transfer of any property beyond the limits of the State."

In *West Virginia Mortgage & Discount Corporation v. Newcomer*, 101 W. Va. 292, the Mortgage & Discount Corporation a few days before the beginning of the tax year, for the purpose of evading taxation, executed to a nonresident brokerage firm its note, payable a few days after the beginning of the tax year, for a sum equal to the full amount of its money, credits and investments, to be used in purchasing for its use United States or other nontaxable securities, which were to be attached to the note as collateral security. The plaintiff never saw the bonds or certificates, and did not know in fact that the agent ever purchased same, except from letters received. The certificates were never

within the State of West Virginia. In considering the question of whether or not there was any really subsisting indebtedness on the return day for taxation, the court found that the tranaction began on December 15th, and a resale of the securities was made on January 10th in satisfaction and in extinguishment of the note. The court said, page 299:

"* * * We think it plain, however, that the creation of the debt and its discharge constituted but a single transaction, and that no debt in fact existed after the transaction formally creating it which was not in legal effect discharged at the same time by a contemporaneous appropriation of the securities pledged, if in fact any such securities were purchased for plaintiff's account.

* * * * * *

"It can not be controverted that a citizen acting in good faith, may of right invest his money in nontaxable government or other nontaxable securities, even though his object be to avoid payment of taxes; the law gives him that right. And we are cited to decisions from other states, sustaining the proposition that one who borrows money and invests it in nontaxable securities, is entitled, if the statute gives him the right, to deduct the indebtedness thus created from the amount of his money, credits and investments for the purpose of establishing a basis for taxation, the debt being real, bona fide, and not colorable and feigned or fraudulent in fact: Among the cases cited are: People ex rel. Thurman, Respondent, v. John Ryan, Jr., et al., Appellants, 88 N. Y. 142; Stillwell v. Corwin, 55 Ind. 433; Hutchinson v. Board of Equalization, 67 Iowa, 182; United States v. Isham, 84 U. S. 496.

"But as already indicated, the view we take of the facts in this case renders it unnecessary for us to go into or review the cases relied on by counsel for plaintiff. We prefer to rest our decision wholly

upon what we deem a proper construction of our statute and the fact that although there was a colorable transaction between plaintiff and C. F. Childs & Company, by which plaintiff attempted to create a fictitious debt which it might deduct from the amount of its money, credits and investments in its return to the assessor, it was colorable only, and in fact no bona fide debt within the meaning of our statute was owing by it on the first day of January, 1924, for which it was entitled to such reduction. The assessor and the board of equalization and review were therefore justified in denying the offset or deduction; and there is no error in the judgment of the circuit court complained of on the present writ."

In re People's Bank of Vermont, 208 Ill. 300, the president of the bank was called before the board of tax review and asked whether he bought government bonds late in March, 1901, and sold them early in April, 1901, for the express purpose of evading the tax on money, which question he declined to answer, but did state: "I did it to save taxes, because they were not subject to taxation, as I thought." The court said, page 305:

"* * * The president of the bank in effect admitted that the bonds were purchased for the purpose of evading taxation, and the circumstances tend most strongly to establish that such was the fact and purpose. This was a banking institution, and if it was the mere question of the safe keeping of these bonds and the transaction was an investment for the benefit of profits to the banking concern, there could be no good reason for leaving them upon special deposit in some bank distant from the situs of taxation. We may not be warranted, from the evidence, in saying that such was the fact, but it may be easily seen that the bonds in question, lying in the hands of the convenient depository,

may have subserved the same purpose for many like banking institutions, and thus repeatedly defrauded the State and municipalities of their proper taxes. While such institutions have the right to invest in such securities, and courts are bound to recognize that right, when it becomes a question between them and the State, and that question relates to the purpose of the purchase, and the facts tend to show that such purpose was the evasion of taxation, then the courts may look upon such transaction as none other than fraudulent in law, and of such character that the beneficiaries can not be allowed, under the cloak of an apparent legitimate transaction, to thus avoid their duty and responsibility to the State."

In *Poppleton vs. Yamhill County*, 8 Or. 338, a resident of Yamhill County sought to remove his notes and mortgages from the taxing jurisdiction of the county by placing them temporarily in the hands of a firm in another county as security for a loan to him of $1,000.00. The Court says:

"That the property in the notes was in Poppleton was not questioned, but it is claimed that by the evidence it appeared that they were pledged to De Lashmutt and Oatman to secure the one-thousand dollar note given by Poppleton to them. If they were so pledged, in good faith, to secure the payment of this note, then they were not taxable in Yamhill County, but were taxable in Multnomah under section 15, page 757, of the statute. But if, in order to avoid the payment of the taxes in Yamhill County, Poppleton borrowed one thousand dollars of De Lashmutt and Oatman, and assigned or delivered these notes to them for the purpose of avoiding such taxes, then the transaction was in bad faith and a fraud on the revenue of Yamhill County, and the question of the interest of the respondent in this transaction was a question

of fact, which the board was necessarily called on to try from the evidence."

"To have found this they must have found from the evidence that these notes were transferred by Poppleton to avoid the payment of taxes on them in said County, which would have been a fraud on the revenue of the County, and void as to the County, and could not affect the right of the County to have the property taxed",

In *Whiting Finance Co. vs. Hopkins*, 115 Cal. A. 756, 2 Pac 2d 461, the taxpayer attempted to create an offset against its taxable credits by borrowing $350,000.00 just before the assessment date. It invested this money temporarily in government bonds which were sold after the assessment to liquidate the loan. The Court quotes the following from an earlier California case:

"The weight of authority in our opinion as well as the dictates of decency, honor and loyalty, uphold the right of boards of equalization to fully inquire into transactions of this character with a view to preventing evasion of taxation by individuals or corporations seeking by these and similar methods to do so".

In *Brock & Company v. Los Angeles County*, 8 Cal. 2d 286, 65 Pac. 2d 791, the Court sustained a tax in Los Angeles County at the domicile of the plaintiff, on a stock of jewelry which the taxpayer removed from the jurisdiction to Hawaii shortly before the date of assessment, and later returned to its place of business in California.

The principle on which such schemes are held ineffective by the Courts is, not that the shift of property from place to place, or from one form to another was not *actually made* by the taxpayer; but rather that

the change made was *temporary* in fact and intention. This principle applies with equal force in the case at bar. It is absurd to say from the facts before us that Hayes had any intention of making a permanent investment in Federal Reserve Notes. He shifted his intangibles into that form and held the notes in Chicago only long enough to sign the gift in trust.

This decedent was a resident of the state of Oregon and as such enjoyed its full protection of his person and estate. His estate ought to contribute to the support of the state its full proportion of tax. The power of taxation inherent in this state ought not to be defeated by last minute attempts at evasion.

This Court will readily appreciate the serious loss of revenue to the states which will result, if it be held that they are without constitutional power to tax gifts in contemplation of death made under the circumstances here disclosed. Any individual who felt death approaching and who possessed liquid securities would be able, at the last moment, to convert the same into parcels of currency in one or more states and thus avoid most of the inheritance tax at his domicile. The possibilities are by no means exhausted in the case at bar, for by placing the currency in a large number of states, the decedent could probably bring all of his estate within the several exemptions and thus avoid all inheritance tax. We do not perceive how the situation could be remedied by legislation.

E

The Federal reserve notes involved in this case did not acquire a situs for taxation purposes in the State of Illinois because they were acquired only for the

specific purpose of evading taxation, and were not used for any permanent purpose in that state.

Southern Pacific Co. v. Kentucky, 222 U. S. 63, 32 S. Ct. 13, 56 L. ed. 96.

Blodgett v. Silberman, 277 U. S. 1, 48 S. Ct. 410, 72 L. ed. 749.

Frick v. Pennsylvania, 268 U. S. 473, 45 S. Ct. 603, 69 L. ed. 1058.

Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194, 26 S. Ct. 36, 50 L. ed. 150.

City Bank Farmers Trust Co. v. Schnader, 293 U. S. 112, 55 S. Ct. 29, 79 L. ed. 228.

There is a further principle of law which supports the jurisdiction of the State of Oregon to tax this transfer. Under the maxim "mobilia sequuntur personam" it was the rule that all personal property, both tangible and intangible, had its situs at the domicile of the owner. The rule is thus expressed in *Southern Pacific Co. v. Kentucky*, 222 U. S. 63, 32 S. Ct. 13, 56 L. Ed. 96:

> "Since, therefore, an artificial situs for purposes of taxation is not acquired by the enrollment nor by the marking of a name upon the stern, the taxable situs must be that of the domicile of the owner, *since that is the situs assigned to tangibles where an actual situs has not been acquired elsewhere.* The ancient maxim which assigns to tangibles as well as intangibles, the situs of the owner for purposes of taxation, has its foundation in the protection which the owner receives from the government of his residence; and the exception to the principle is

based upon the theory that if the owner, by his own act, gives to such property a *permanent location elsewhere*, the situs of the domicile must yield to the actual situs and resulting dominion of another government." (Italics ours.)

Disputes as to the taxable situs of tangible personalty ordinarily arise where the owner for business reasons keeps or uses the property in some state other than his domicile. But examination of the facts in the case at bar shows that it does not present any such situation. Dr. Hayes had no business other than keeping his money invested; and at the time he purchased the notes and made the gift in question he was not contemplating a business venture, but on the contrary was arranging a distribution of his property in contemplation of death.

We do not know where the Federal reserve notes involved in this case were located prior to their acquisition by Dr. Hayes and that fact is immaterial. Neither are we concerned with the location of the notes after they were taken into the possession of the trustee. It is stipulated, however, that as far as Dr. Hayes was concerned the notes were only owned and kept by him for a few days. This record affirmatively shows that the ownership of the notes by Dr. Hayes was the antithesis of permanent. He did not own, use or store the property in Chicago for any appreciable time nor intend to do so. He acquired these notes at the latest possible moment and for the sole purpose of giving them away immediately.

Respondents are forced to contend that mere physical presence of the notes in Chicago at the instant of gift is in itself sufficient to establish a taxable situs there, but we have not found any decision which sup-

ports this view. In the Court below, Respondents relied on *Blodgett v. Silberman*, supra, where a trifling sum of coin and currency belonging to a resident of Connecticut, but which was found at his death in a safe deposit box in New York, was held to have its taxable situs in the state of New York. The report in that case does not disclose the circumstances under which the money was kept by the decedent in New York, but the opinion does state that it was "so definitely fixed and separated in its actual situs from the person of the owner" as not to be "distinguished from the paintings and furniture held in the Frick case to be taxable only in the jurisdiction where they were".

We turn, therefore, to the Frick case (268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058), to discover what factors must have been present to cause the Court to make the comparison between the two cases.

We find that Frick was a resident of Pennsylvania, who at his death owned tangible personalty which ". . . consisted of rare paintings, rugs, furniture, bronzes, porcelains and other art treasures known as 'The Frick Collection', and housed in a building in New York City specially constructed for that purpose".

These art treasures were not casually or temporarily in New York at decedent's death. On the contrary, the fixed nature of that location is apparent from the fact that they were housed in a building specially constructed for that purpose. Since the Court in the Blodgett case draws a parallel between the situation of the money in New York and the location of the Frick art treasures in the same city, the Court must have found that Hirsch's money was in New York with some degree of permanence. And this would seem

natural since his business was in New York and only his residence in Connecticut.

The Frick case makes clear what is necessary to establish an "actual situs" for taxation outside the domicile. The art treasures were "permanently located and employed" in New York City, and received their protection in that jurisdiction. Likewise, they were bulky so as to be easily found and taxed. It is such a use and such a location that constitutes "actual situs". How can this designation be applied to the situation of the property in the case at bar? In the Frick case the paintings had been owned and exhibited in New York for years, and the owner's intention to leave them there is evidenced by the fact that a building was constructed to house the collection; in our case, the very ownership of the property was transient. Decedent actually held the notes for three days only, and his intention was to give them away as soon as possible.

On the point of situs of tangibles, both the Blodgett and Frick cases mention the earlier decision *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36, 50 L. Ed. 150, where it was held that rolling stock "permanently located" and used in states other than the domicile of the owner in Kentucky could not be taxed by Kentucky. What is meant in *Union Refrigerator Transit Co. v. Kentucky*, supra, by the term "permanently located" is made clear in the later case of *Southern Pacific Co. v. Kentucky*, supra, where it is said:

> "It has been urged that the case of Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 195, 50 L. Ed. 150, lays down the principle that jurisdiction to impose taxes upon tangible property is, under the 14th Amendment, wholly dependent upon

the actual situs of the property taxed, and that the fiction which gives movables the situs of the owner for purposes of taxation is inconsistent with that due process of law guaranteed under that Amendment. The question for decision in that case, as stated in the fore part of the opinion, was, 'whether a corporation organized under the law of Kentucky is subject to taxation upon its property *permanently located in other states, and* employed there in the prosecution of its business'. The property in question was railroad cars, a kind of movables obviously capable of acquiring a permanent location other than that of the owner. The judgment of the court was that the taxation of such property so *permanently located* elsewhere by the law of the domicile of the owner would be a denial of due process of law, and beyond the power of the state. The principle was not a new one, and was declared to rest upon repeated judgments of this court, the cases of Northern C. R. Co. v. Jackson, 7 Wall. 262, (and other cases), being cited as precedents. That judgment did not deny to the state of the domicile of the owner power to tax tangibles which had not acquired an actual situs elsewhere." (Emphasis is that of the Court.)

In *City Bank Farmer's Trust Co. v. Schnader*, 293 U. S. 112, 55 S. Ct. 29, 79 L. Ed. 228, a decedent who was domiciled in New York owned certain paintings which he had placed in Philadelphia for exhibit and sale under a loan agreement of indefinite duration. The Court found that the evidence disclosed more or less permanent location of the paintings in Philadelphia on account of their continued exhibition there, with no immediate intention on the part of the owner to remove them. The opinion concludes:

"The location of the portraits in Pennsylvania was *not merely transient, transitory* or *temporary*,

but it was fixed in an *established abiding place* in which they remained for a long time." (Italics ours.)

It cannot be plausibly asserted that Hayes had given these Federal Reserve Notes any "established abiding place" in the safety deposit box. Their presence in the box was just as "transient, transitory or temporary" as Hayes could make it, for they were only intended to remain in the box until he could sign up the trust.

The term "permanent", as used by the Courts in discussing the law of situs, does not, of course, require a showing that Hayes intended to keep the Federal Reserve Notes in Illinois perpetually. It is true, as Respondents argued in the Court below, that the decisions only require a showing of "more or less permanent location". But in our case the record does not disclose the slightest degree of permanence in connection with the presence of these notes in Illinois, so far as Hayes is concerned. On the contrary, it affirmatively appears that Hayes only obtained the notes with the intention of giving them away immediately, and their presence in the deposit box was simply one step in the transit of the gift from Hayes to his donees. It is as though Hayes had purchased the notes and placed them in a mail box to be picked up and delivered to the trustee.

The modification of the rule mobilia sequuntur personam, by which tangibles which have acquired an actual situs apart from the owner's domicile are held to be immune from tax at the domicile, is obviously designed to prevent injustice. But the cases above mentioned clearly indicate the limits of the modification,

so that it cannot be carried to the opposite extreme and be used as an instrument of tax evasion. See also *Cream of Wheat Co. v. County of Grand Forks*, 253 U. S. 325, 40 S. Ct. 558, 64 L. Ed. 931, 934.

The Supreme Court of the State of Oregon in its opinion stressed the fact that the decedent had only been domiciled in the State of Oregon for a few years prior to his death. We are unable to perceive how this is at all material since the power of the state to tax its citizens cannot be measured by the duration of their domicile. When Dr. Hayes took up his residence in the State of Oregon, he became subject to all of its laws and taxes, and ceased to be subject to the laws and taxes of his former domicile in Wisconsin. He never resided in the state of Illinois. In its opinions on this case the Oregon Supreme Court relies on the following as supporting a taxable situs of the paper money in Chicago and these cases are also cited in the Court's opinion. *Brown v. Houston*, 114 U. S. 622, 29 L. Ed. 257. *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 48 L. Ed. 538. *General Oil Co. v. Crain*, 209 U. S. 211, 52 L. Ed. 754. *Bacon v. Illinois*, 227 U. S. 504, 57 L. Ed. 615. *Minnesota v. Blasius*, 290 U. S. 1, 78 L. Ed. 131. We agree that the holding of the Court in each of these cases is entirely sound under the facts which were before the Court therein. But the facts in all of these cases are wholly unlike those in the case at bar.

In *Brown v. Houston*, certain coal belonging to a resident of Pennsylvania was lying on barges at New Orleans awaiting sale at that place by the owner's agent. The Court held that the state of Mississippi had jurisdiction to tax coal because the Court found that

> "It was imposed after the coal *had arrived at its destination* and *was put up for sale. The coal* had

come to its *place of rest*, for *final disposal* or use, and was a *commodity in the market of New Orleans.*"

In *American Steel & Wire Co. v. Speed*, steel products belonging to a New Jersey corporation were shipped to an agent in Tennessee who, from time to time at the direction of the owner, selected and filled orders from this stock and shipped the same to various purchasers. This was held to constitute doing business in Tennessee. In respect to situs of the goods, the Court says [Page 546 L. Ed.]:

> "With these facts in hand we are of opinion that the court below was right in deciding that the goods were not in transit, but on the contrary, had *reached their destination* at Memphis, and were there *held in store* at the risk of the steel company, to be sold and delivered as contracts for that purpose were completely consummated."

The same is true in *General Oil Co. v. Crain* where oil was shipped from refineries outside the state to plaintiff's plant in Memphis from which the plaintiff's customers in other states were supplied. It was held that the oil had reached its destination.

Similar holdings based on the same reasoning were arrived at in *Bacon v. Illinois* and *Minnesota v. Blasius*. In all of these cases the goods had arrived in the state and were being there held for sale or some other use directly connected with a local business conducted by the owner in said state. In each of them the owner was "doing business" actively in the state to which the goods were shipped and where the tax was imposed. Under these circumstances even the accounts receivable and other intangibles growing out of or used in such business could have been taxed in the state where the busi-

ness was being conducted. *Marshall-Wells Hardware Co. v. Multnomah County*, 58 Or. 469.

None of these cases involved the temporary conversion of intangibles into tangibles for the purpose of evading taxes. All of them arose out of ordinary business transactions to which the question of tax was purely incidental.

The constitutional provisions relied upon by Respondents in this case were designed as a shield against oppression; but they are not being invoked for that purpose here. The facts of this case, when examined in the light of reasonable human behavior clearly show that decedent has attempted to so manipulate the subject matter of this gift as to use those consitutional guaranties as a cloak for evasion of inheritance tax at his domicile. The case should be reversed.

Respectfully submitted,

I. H. VAN WINKLE,
Attorney-General for the State of Oregon,

WILLIS S. MOORE,
Assistant Attorney-General,

DEAN H. DICKINSON,
Counsel for Petitioner.

APPENDIX A

STIPULATION OF FACTS

reading with caption and title omitted, as follows:

Come now Ruth Hayes McGraw and Edmund Hayes, executors of the estate of Edward Stephen Hayes, deceased, by and through their attorneys of record, and Rufus C. Holman, State Treasurer of the State of Oregon, by and through his attorney of record, and stipulates that the following is a true statement of facts relating to a transfer by said decedent of certain property by virtue of a trust agreement hereinafter referred to, dated August 15, 1935:

I.

Decedent died testate February 11, 1936, and was at the time of his death a resident of and domiciled in the County of Multnomah, State of Oregon. Decedent was a physician by profession but had retired from active practice and had attained the age of 79 years at the time of his death.

II.

Thereafter, the last will and testament of decedent was admitted to probate by this court, and in accordance with said will, Ruth Hayes McGraw, decedent's daughter, and Edmund Hayes, decedent's son, were appointed as executors and thereafter qualified and are now acting as executors of said will and the estate of decedent. The said last will and testament on file in this court, is by this reference made a part of this stipulation of facts.

III.

Decedent, prior to the time of establishment by him of a domicile in the State of Oregon, was and for over fifty years had been a resident of and domiciled in the City of Eau Claire, in the State of Wisconsin. During the month of September, 1933, decedent moved to Oregon, and established a domicile in Multnomah County, Oregon. For a period of over ten years prior to August 15, 1935, Harris Trust and Savings Bank, an Illinois corporation, (hereinafter referred to as "Harris Bank") had acted as agent of decedent as custodian of bonds and some stocks owned by decedent. Stocks so held by said Harris Bank included only so-called "market stocks", that is, stocks listed and actively traded on the principal security exchanges. As such agent said Harris Bank had collected income and principal on said bonds and dividends on stocks, had credited income so collected to a checking account of decedent in said Harris Bank, subject to decedent's order, had acted as decedent's financial agent in his investments in bonds, stocks, and reinvestments in bonds and stocks of moneys received from maturities of principal of bonds and of moneys derived by Harris Bank from sales of bonds and stocks held by Harris Bank in said agency account for decedent. The bonds and stock certificates from time to time owned by decedent and held for decedent's account by Harris Bank were never physically present or situated within the State of Oregon, but were at all times while owned by decedent physically present and situated in Chicago, in the State of Illinois. In addition to securities thus administered by said Harris Bank as agent, decedent owned other personal property consisting for the most part of unlisted stocks, and certificates

for said other stocks were held by decedent at Portland, Oregon, until the time of the establishment of the trust under agreement dated September 19, 1935, hereinafter referred to.

IV.

On or about August 8, 1935, Harris Bank held in said agency account at Chicago, Illinois, bonds owned by decedent of the par value of $691,000.00, and said bonds had a market value of not less than $625,000.00. On said date decedent owned other personal property, consisting for the most part of corporate stocks and balances on deposit in banks, of a value of approximately $400,000.00. On or about August 8, 1935, decedent directed Harris Bank to sell and liquidate sufficient of said bonds, owned by decedent and held by Harris Bank, to procure a sum which together with cash balances in decedent's account with Harris Bank would equal $450,000.00, and directed Harris Bank to use the sum of $450,000.00 thus obtained to purchase, as decedent's agent, Federal Reserve Notes of the face value of $450,000.00. Said Harris Bank complied with said directions and between August 8, 1935, and August 12, 1935, as agent for decedent, sold in the open market bonds held by Harris Bank and owned by decedent, and from that source realized for decedent's account the sum of $176,062.01. On August 12, 1935, decedent borrowed from Harris Bank, on a demand promissory note, the sum of $183,937.99. On said date decedent had a balance in his checking account in excess of $90,000.00, in addition to any sums herein referred to. Thereupon and prior to August 15, 1935, Harris Bank, with the cash balances in decedent's account with said Harris Bank, derived to the extent of

$176,062.01 from said sale of bonds, to the extent of $183,937.99 from said loan by Harris Bank, and to the extent of $90,000.00 from credit balances in decedent's account from other sources, purchased for decedent forty-five (45) Federal Reserve Notes of the denomination of $10,000.00 each, and numbered from G00000031 A to G00000040A, both inclusive, and from G00000126A to G00000160A, both inclusive, of the value of $450,000.00, and decedent thereupon became the owner of said Federal Reserve Notes. All of said Federal Reserve Notes were thereupon and prior to August 15, 1935, placed in a safe deposit box rented by decedent, being box No. 2100, in the vault of Harris Safe Deposit Company, in the City of Chicago, Illinois, and remained in said box from the time they were placed therein until August 19, 1935. On August 19, 1935, certain of said Federal Reserve Notes were removed from said safety deposit box, but the remainder thereof remained in said safety deposit box, and were removed therefrom at times subsequent to August 19, 1935. At no time prior to August 19, 1935, were any of said Federal Reserve Notes within the State of Oregon, and the parties to this stipulation have no evidence that any of said Federal Reserve Notes have ever been within the State of Oregon.

V.

Between August 12, 1935, and August 29, 1935, said Harris Bank, upon directions by the decedent, and as decedent's agent sold in the open market bonds held by said Harris Bank in said agency account, and as proceeds of said sales were received by it, paid said proceeds to itself on account of said demand note, and on August 29, 1935, said demand note was thus paid in full by decedent. Payments thus made on account

of the principal due on said demand note were made in amounts and on dates as follows:

Date, 1935	Paid	Balance Due
Aug. 12		$183,937.99
13	$120,191.07	63,746.92
14	41,635.83	22,111.09
15	1,175.00	20,936.09
16	1,246.52	19,689.57
17	5,300.52	14,389.05
19	11,377.62	3,011.43
21	1,037.99	1,973.44
21	245.56	1,727.88
29	1,727.88	.00

VI.

On August 15, 1935, decedent, then being in Multnomah County, Oregon, executed in counterparts that certain agreement dated August 15, 1935, between decedent, as Settlor, and said Harris Bank, as Trustee, to create a trust to be known and designated as "Edward Stephen Hayes Trust, Number One, dated August 15, 1935." Said counterparts of said agreement dated August 15, 1935, thus executed by decedent, were forwarded *by United States air mail* to said Harris Bank, at Chicago, Illinois. On or before August 17, 1935, said counterparts were received at Chicago, Illinois, by said Harris Bank, and on or before August 17, 1935, said counterparts were executed by said Harris Bank by its officers thereunto duly authorized. Exhibit A, attached to and made a part of "Objections of State Treasurer to Determination of Inheritance Tax," is a true copy of said agreement dated August 15, 1935.

VII.

The transfer by decedent of said Federal Reserve Notes to said Harris Bank by said agreement of August 15, 1935, was made by decedent in contemplation of his death.

VIII.

From time to time after August 19, 1935, said Federal Reserve Notes were removed from said safety deposit box No. 2100, and were thereafter used by said Harris Bank to purchase bonds and other personal property for the account of said Edward Stephen Hayes Trust Number One, and property thus purchased by the use of said Federal Reserve Notes has at all times after August 19, 1935, been held and administered by said Harris Bank, as trustee of said Edward Stephen Hayes Trust Number One. None of the property thus acquired by said trustee for said Edward Stephen Hayes Trust Number One was ever owned by decedent, and in particular, said trustee did not purchase or otherwise acquire for said Edward Stephen Hayes Trust Number One any of the bonds or other assets which at any time were owned by decedent or which at any time constituted a part of the property held by said Harris Bank as agent for decedent.

IX.

On or about September 19, 1935, decedent, then present in Multnomah County, Oregon, executed in counterparts that certain agreement dated September 19, 1935, between decedent, as Settlor, and said Harris Bank, as Trustee, to create a trust to be known as "Edward Stephen Hayes Trust, Number Two, dated September 19, 1935." Said counterparts of said agreement of September 19, 1935, thus executed by decedent, were forwarded to said Harris Bank, at Chicago, Illinois;

and or before September 24, 1935, said counterparts were executed by said Harris Bank by its officers thereunto duly authorized. A true and correct copy of said agreement dated September 19, 1935, is attached to and made a part of the executors' "Petition for Order Determining Inheritance Tax," heretofore filed in this court, as Exhibit A to said petition. Said Exhibit A to said petition is by this reference made a part of this stipulation of facts. The making of an agreement, as finally set forth in said agreement dated September 19, 1935, was under consideration by decedent at the time of the preparation and execution of said agreement dated August 15, 1935, but decedent did not definitely conclude to make said agreement dated September 19, 1935, until some time subsequent to September 1, 1935.

X.

The order made and entered herein, dated February 19, 1937, determining inheritance tax, to which the objections of State Treasurer to determination of inheritance tax were directed, determined as the gross estate of decedent subject to Oregon inheritance tax, property, the legal title to which was vested in decedent at the date of his death, and the property held by said Harris Bank, as trustee, on February 11, 1936, the date of decedent's death, and constituting the entire assets of said Edward Stephen Hayes Trust Number Two, established by said agreement dated September 19, 1935; but said gross estate subject to tax, so determined, did not include the property of the value of $450,000.00 transferred by decedent by said agreement of August 15, 1935, or any assets of said Edward Stephen Hayes Trust Number One acquired by said Harris Bank, as trustee, by the use of property so transferred by said agreement of August 15, 1935. If

all of the property transferred by said agreement dated August 15, 1935, were included in decedent's gross estate subject to Oregon inheritance tax, then the gross estate of decedent subject to such inheritance tax by the State of Oregon would be as follows:

Gross estate subject to inheritance tax as shown in said order dated February 19, 1937	$ 637,196.52
Additional amount, transfer by said agreement dated August 15, 1935	450,000.00
Total	$1,087,196.52

XI.

Donald Hayes McGraw, one of the beneficiaries named in said agreements dated, respectively, August 15, 1935, and September 19, 1935, was, on and prior to August 15, 1935, and at all times subsequent thereto, has been the legally adopted son of Ruth Hayes McGraw, the decedent's daughter, and of Don McGraw, her husband.

This stipulation is entered into for the sole purpose of determining the facts herein set forth, and may be offered in evidence by either of the parties hereto as proof of the facts herein recited, subject to the right of either party to object to the receipt in evidence of the entire stipulation or of any fact herein recited upon the ground of lack of materiality. But nothing herein set forth shall be construed by any court as an admission by said executors that the subject of said transfer by decedent by said agreement dated August 15, 1935, or any assets acquired by said Harris Bank, as trustee, by the use of property so transferred by said agreement dated August 15, 1935, is subject to inheritance

tax by the State of Oregon, or may be included in any way in the determination of the gross estate of said decedent subject to inheritance tax by the State of Oregon.

It is further stipulated and agreed that all of the documents on file in this court in the matter of the estate of Edward Stephen Hayes, deceased, may be considered as a part of the record in these proceedings to the same extent as though each of said documents were offered and received in evidence by this court in the proceedings relating to the objections of the State Treasurer to the order of February 19, 1937, determining inheritance tax.

DEAN H. DICKINSON,

Of Attorneys for Rufus C. Holman, State Treasurer of Oregon.

CHARLES E. MCCULLOCH,

FLETCHER ROCKWOOD,

CAREY, HART, SPENCER & MCCULLOCH,

Attorneys for Ruth Hayes McGraw and Edmund Hayes, Executors of the Estate of Edward Stephen Hayes, Deceased.

APPENDIX B

INHERITANCE TAX LAWS

Section 10-601, O. C. 1930. Property and transfers subject to tax—Exceptions.

All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass or vest by dower, curtesy, will or by statutes of inheritance of this, or any other state, or by deed, grant, bargain, sale or gift, or as an advancement or division of his or her estate made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to tax at the rate hereinafter specified in section 10-603, to be paid to the treasurer of the state for the use of the state; and whenever property, real or personal, other than real property held by the entirety, is held in the joint names of two or more persons, or deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates be-

onged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such parts thereof as may be shown to have originally belonged to such surviving joint tenant, joint depositor or person, and never to have been acquired from the decedent for less than a fair consideration in money or money's worth, and if said property shall have been acquired from decedent for less than such fair consideration, there shall be excepted from the value of said property a portion equal to the amount of the consideration so furnished; and all heirs, legatees and devisees, administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for any and all such taxes, with interest thereon, until the same shall have been paid as hereinafter provided; provided, however, that devises, bequests, legacies and gifts to benevolent, charitable or educational institutions, societies, associations or corporations organized or existing within this state and actually engaged in this state in carrying out the objects and purposes for which so organized or existing, or to a corporation, association or society to be organized for such purposes under the laws of this state pursuant to the terms of the instrument providing such devise, bequest or gift; and devises, bequests, legacies or gifts to any corporation, society, institution, person or persons or association of persons in trust for such charitable, benevolent or educational purpose where such devise, bequest, legacy or gift is limited by the donor for use within the United States of

America shall be exempt from taxation under the provisions of this act; and provided further, that there shall be exempted from taxation under this act all proceeds and contract of life insurance taken out at any time on the life of the decedent and payable to a beneficiary or beneficiaries other than the estate or the executor or administrator of the estate of the deceased insured, whether payable directly or to or through a trustee, immediately or at future dates; but such exemptions shall not include any investment policy issued by a life insurance company which does not include in the policy the element of life insurance. Any transfer of property made by a decedent by deed, grant, bargain, sale or gift, within three years prior to said decedent's death without a valuable and adequate consideration therefor, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this act.